

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHARLES JOSEPH FAIN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

NO. CV04-5761JET
CR01-5120-JET

ORDER

THIS MATTER comes on before the above-entitled Court upon Petitioner Fain's Motion for Common Law Writ of Error *Audita Querela*.

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Petitioner seeks re-sentencing by way of a Writ of *Audita Querela* based upon United States v. Booker, 125 S.Ct. 738 (January 12, 2005). The Petitioner's sentence became final prior to the

1 decision in Booker.

2 Booker does not apply retroactively to cases that became final prior to January 12, 2005.

3 Guzman v. United States, 2005 WL 80324 (2d Cir. (N.Y.)). Accordingly, it is hereby

4 ORDERED that the Petitioner's Motion for Writ of Error *Audita Querela* is DISMISSED.

5 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of
6 record.

7 DATED this 1st day of July, 2005.

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9 /s JACK E. TANNER

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11 JACK E. TANNER
12 SR. UNITED STATES DISTRICT JUDGE
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